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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,883	06/27/2003	Thomas J. Harris	20020331.ORI	7224
23595	7590	11/16/2004		
NIKOLAI & MERSEREAU, P.A. 900 SECOND AVENUE SOUTH SUITE 820 MINNEAPOLIS, MN 55402			EXAMINER SOOHOO, TONY GLEN	
			ART UNIT 1723	PAPER NUMBER

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/607,883

Applicant(s)

HARRIS ET AL. *S.C.*

Examiner

Tony G. Soohoo

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>OCT 2003(1SHEET)</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1 and 2 recites the limitation "said barge" in reference to the operation of the conveyor system, but there is no prior reference to a barge. There is insufficient antecedent basis for this limitation in the claim. The claims do recite a vessel mounted system or a vessel, but does not establish it as one in the same. Furthermore depending claims 13 and 14 positively points out that the vessel is a barge which implies that claims 1 and 2 are broader than that of claims 13 and 14 so that the vessel may not be considered as the barge, such as a rowboat, steamboat, catamaran, or ocean liner. This renders the limitation to the scope of the structure of the vessel unclear in claims 1 and 2 once there is a positive reference to a barge.

With regards to claims 1 and 13 whereby the claim does not positively claim "a vessel" or a barge, the claim interpretation is read that the conveyor system merely be functional to provide mixed concrete to a different location and that the structure of parts (a) and (b) may function to be mounted on a vessel.

With regards to claim 2 for examination purposes, whereby the vessel has not been established as a water vessel, however is being read as broadly water vessel. The limitation of a barge is being read into the claim within claim 14.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3, 13 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Doherty 4792234.

Doherty teaches a moveable frame 20, 32, 30 which may be capable of functionally being mounted on any surface, including that of a ship, barge, roadway which includes:

a) two opposed rotary mixing drums 78, 78 and

b) a common conveyor 66, 98 which elevates the material which may be dumped to a location at 160. it is noted that functionally one may place the element 160 on a barge. And that functionally a crane on the shore may be used to access the concrete, or that the end of the nozzle of 160 may be positioned on the shore in order to access the concrete off the barge.

It is noted that the narrative operation of the environment of the conveyor system has not been positively claimed as a structural element, but rather a function operation of the conveyor system. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

It is noted that there is a control system 184.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-5, 7, and 11-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doherty 4792234 in view of Malan 3845631.

Doherty teaches a moveable frame 20, 32, 30 which may be capable of functionally being mounted on any surface, including that of a ship, barge, roadway which includes:

- a) two opposed rotary mixing drums 78, 78 and
- b) a common conveyor 66, 98 which elevates the material which may be dumped to a location at 160.

Doherty also teaches a control system 184 which may control any of the operation of the elements of the device.

The reference teaches a rotating discharge diverting chute 82 which is selectively connectable to the each drum 78, 78 by pivoting along 152 to the mouth 146 of a drum; a collection pan 70, 95, 96, 124,, located above the conveyor belt 66, 98, a water supply storage tank 154.

With regards to claim 7 the operation of the chute system "being capable" is functional in recitation and has not been provided patentable distinction to the claim.

Doherty discloses all of the recited subject matter as defined within the scope of the claims with the exception of having a barge vessel and the mixer/delivery system attached on the barge vessel.

The Malan reference discloses that a floating platform 18 may be provided with a cement mixer plant with a mixer 27 (particular type unstated) and with a discharge chute 28 feeding concrete conveyor 35, 40, 45, and also may feed into optionally a spout 43, fig 3. so that on provide the capability to form cement material off shore to be dispensed off the floating vessel.

In view of the teaching of Malan that one may place a concrete plant on a floating vessel and configure the dispensing conveyors to dispense off the vessel, it is deemed that it would have been obvious to one of ordinary skill in the art to place the system of Doherty upon a floating vessel, or barge so as to provide a manner to make cement off the shore and to easily place cement along the shore.

7. Claims 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doherty 4792234 in view of Malan 3845631 as applied to claim 2 above, and further in view of Farrell 2319807.

With regards to claims 7 and 9 Doherty as modified above discloses all of the recited subject matter as defined within the scope of the claims with the exception of having the conveyor includes a 1<sup>st</sup> and 2<sup>nd</sup> conveyor whereby the 2<sup>nd</sup> conveyor is an elevated mechanized output chute.

The reference to Farrell teaches that concrete mixer drum 19, 20 may be conveyed up a conveyor to an elevate discharge chute 67 for a batch discharge.

Also, has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Accordingly, it is deemed that it would have been obvious to one of ordinary skill in the art to provide two conveyor systems so that conveyance path is of a more convenient routing, and further provide the second conveyor as a elevated batch discharge chute as the type taught by Farrell, so that the discharge of the cement may be more conveniently discharged in a batch manner.

8. Claims 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doherty 4792234 in view of Malan 3845631 and further in view of Farrell 2319807 as applied to claims 7 and 9 above, and further in view of John 5522658.

With regards to claims 8 and 10, Doherty 4792234 in view of Malan 3845631 as applied to claim 2 above, and further in view of Farrell 2319807 discloses all of the recited subject matter as defined within the scope of the claims with the exception of the use of a sump collection to collect gray water for reuse, i.e. recycling the water.

The recycling of water in the cement processing art is old and well known as shown by John 5522658, column 5 lines 5-8, which uses a sump to collect used water

in a cement process for reuse thereby providing advantageous environmental consideration and impact.

Accordingly, it is deemed that it would have been obvious to one of ordinary skill in the art to provide a sump at the bottom of the collection pan 70, 95, 96, 124 and discharge chute of Doherty so as to collect and recycle any water used in the process so as to reduce unwanted the environmental impact.

### ***Conclusion***

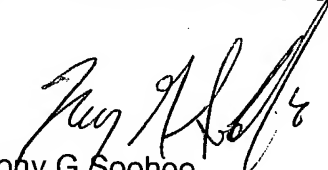
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Paterson 5971600 teaches that a vehicle mounted apparatus may be placed upon a barge, see figure 12. Oberg et al 5605397 teaches the use of two opposed rotating cement drums. Duecy 3367636 teaches the use of an elevated discharge chute with an elevate chute 80 with a rotating cement mixer 30. Maxon, Jr 3151849 teaches a cement mixing plant for a barge, or railway car, column 1, lines 57-62.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 7:00 AM - 5:00 PM, Tues. - Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tony G Soohoo  
Primary Examiner  
Art Unit 1723

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